



Institute
and Faculty
of Actuaries

Disciplinary Tribunal Panel-

Information for the Respondent

February 2018

Disciplinary Tribunal Panel – Information for the Respondent

The purpose of this note is to provide helpful information for Respondents when the allegation against them is being considered by a Disciplinary Tribunal Panel (DTP). There are a number of notes like this available on our website, dealing with different stages of our Disciplinary and Capacity for Membership Scheme (the Scheme). If you cannot find a note that deals directly with your query, please contact us for assistance.

What is the DTP?

A DTP hearing broadly follows the procedures adopted in UK civil courts. The Institute and Faculty of Actuaries (IFoA) is responsible for bringing the case against you (the Respondent) and each party will have an opportunity to present their case before the DTP. Each party will begin by introducing their case, calling witnesses (who may be cross-examined by the other party), and then having the chance to make a closing submission. Please note that once a case is referred to a DTP the role of the Case Manager and Investigation Actuary changes from being neutral to being prosecutorial – they will bring the case against you.

The standard of proof to be applied by the DTP, under the Scheme, is the civil standard of proof (i.e. on the balance of probabilities) as applied by the Courts of England and Wales in relation to disciplinary proceedings. This means that there must be evidence that it is “more likely than not” that the conduct took place as alleged

Each DTP consists of three or more people, at least one of whom shall be a Fellow of IFoA and at least one shall be a Lay person who is not a Member of the IFoA. It is the DTP who will decide whether the allegations against you amount to Misconduct and, if so, what the appropriate sanction (if any) would be.

The DTP are advised by an independent Legal Adviser. The secretary to the DTP also attends the hearing to advise on procedural matters but does not participate in the consideration of the facts.

The Legal Adviser

The Legal Adviser is an experienced Solicitor, Barrister or Advocate who advises the DTP on points of law. Any advice the Legal Adviser gives to the DTP will usually be given in public. However the Legal Adviser will accompany the DTP when it is deliberating in private (but has no role in the decision making process). Where the DTP receives any legal advice during such deliberations, that advice will be repeated both to the IFoA and you when the DTP is back in public session. The IFoA, you and/or your representatives can then make submissions with regard to this advice.

Representation

The IFoA are usually legally represented during a DTP. Occasionally one of the IFoA’s employees will present the IFoA’s case. It is strongly recommended that you take independent legal advice. You may wish to instruct a legal representative to prepare or present your response to the allegations made against you or you may choose to do so personally. You can also be accompanied by a friend/colleague at the hearing.

Before the hearing

At any stage prior to the DTP hearing if you consider that the Capacity for Membership provisions of the Scheme (capacity process) may apply it is open to you to make an application to the DTP. This may be relevant if you have significant and ongoing issues of health. There is a separate information note that explains the capacity process.

If the capacity process does not apply, the Case Manager and Investigation Actuary will prepare a Charge of Misconduct which will set out all of the allegations against you. The Charge will be supported by evidence in support of the allegations.

The Charge and supporting documentation will be sent to you, usually by the IFoA's legal representative in the proceedings, on behalf of the Case Manager. The Case Manager, assisted by the Investigation Actuary, aims to serve the Charge on you within 12 weeks from the date of the matter being referred to a DTP from an Adjudication Panel or, the date from which you elected to refer the matter to a DTP. In more complex cases it may take up to 16 weeks to prepare and serve the Charge.

At the same time as the Charge is served upon you, it is also sent to the secretary to the DTP who will then make arrangements for the hearing. The secretary will contact you, or your representatives to check your availability. You will normally be given a minimum of four weeks notice of the DTP date.

Once the date of the DTP is arranged, the secretary will send you a notice of the date, time and location of the hearing. The secretary will also confirm to you that you have the right to come to the hearing and to be represented, to present evidence and to call and question witnesses. You can also be accompanied by a friend/colleague if you are not represented.

DTP hearings are usually held in public and details of the date, time and place will be published on the IFoA's website under the section entitled "Forthcoming Hearings". The notice will include your name, status, date of Membership and also indicate the nature of the Charge being laid against you.

The IFoA aims to hold DTP hearings within six months of referral to a DTP, or up to eight months in more complex cases.

Submitting grounds of defence

If you wish to defend the Charge against you and are not intending to make an admission of Misconduct, you should serve any grounds of defence on which you are intending to rely, upon the secretary to the DTP and the Investigation Actuary/Case Manager, no later than 21 days after the Charge was served on you.

If you wish to amend your grounds of defence after you have submitted them, you can do so as long as you serve them on the secretary to the DTP and the Investigation Actuary/Case Manager no later than 14 days before the date of the hearing.

Submitting documents

If there are any additional documents which you are intending to rely upon as part of your case you must serve them upon the secretary to the DTP no later than 21 days prior to the hearing. The IFoA must also follow this rule.

Do I have to attend the DTP hearing?

No, but it is usually in your best interests to do so. The DTP may have questions about the allegation(s) that only you can answer. The hearing may take place even if you do not attend, as long as the IFoA can show that you were given reasonable notice of the hearing. If you are not able to attend the hearing or do not wish to attend, please notify the secretary to the DTP as soon as possible. If you are attending the hearing, please advise the secretary whether you will be represented and if so, who your representative(s) will be.

Can I call witnesses?

Yes, you are entitled to call any witnesses you wish. If you are intending to call witnesses you should notify both the Case Manager and the secretary to the DTP. If you do call witnesses, the IFoA has the right to cross examine them and the DTP can ask them questions too.

Role of the IFoA

The IFoA will bring the case against you. The case is normally presented on behalf of the IFoA by a Solicitor or Barrister/Advocate. Occasionally a suitably qualified IFoA employee will present the case. Their role is to present the case to the DTP, examine and cross examine witnesses as appropriate and show the DTP how the case against you can be proved.

Where will the hearing be held?

DTP hearings are normally held in an external location in London or Edinburgh. They are not held at the IFoA offices, but at neutral premises. The secretary to the DTP will send you a notice of the date, time and location of the hearing.

If you have a disability, communication difficulties or other additional needs, please advise the secretary before the hearing, so any reasonable adjustments can be made.

Who will be at the hearing?

The DTP members and their Legal Adviser will attend the hearing, as will the secretary to the DTP. The secretary is responsible for the administration of the hearing and may also advise the DTP on procedural matters.

On behalf of the IFoA, there will usually be a Solicitor or Barrister who will present the prosecution case against you. The Investigation Actuary and Case Manager will also usually be in attendance.

A stenographer will attend and they will take a note of the hearing. A copy of the transcript will be made available and if you would like a copy you should contact the secretary to the DTP to request a copy.

DTPs are usually held in public (other than in exceptional circumstances). This means that anybody who wishes to attend is entitled to sit in and observe the proceedings, including the person who made the complaint to the IFoA. Sometimes hearings, or part of hearings, are held in private due to the confidential nature of the matters involved. The IFoA, you or your representative can apply to the DTP to hear all or part of a case in private. Further information about this can be found below.

Witnesses are people who can be called to give evidence either by the IFoA, or you, or your representative. Witnesses will be asked to remain outside of the DTP hearing until they have completed giving their evidence. After that, the witness may sit in and observe the proceedings as with any member of the public.

How do I make an application to have part/all of the hearing in private?

You, your representative or the IFoA can, at any time, make an application to the DTP, to hear part or all of the hearing in private. The DTP can, acting of their own motion, hold part of all of the hearing in private if they think there is good reason for doing so. If you wish to make an application in advance of the hearing for all or part of it to be held in private, please advise the secretary to the DTP.

Will the DTP know how the case came to be at a DTP?

The IFoA do not provide the DTP with any details of how the case has come before a DTP. The IFoA will not advise the DTP whether it was referred by an Adjudication Panel or referred by you/with your consent.

On the day of the hearing

The secretary to the DTP will have notified you in advance of the start time of the hearing. If you would like to see the hearing room before the DTP starts, please advise the secretary who will show you the room and explain any procedural matters upon request. The room will be laid out in an arrangement similar to that shown at the back of this document.

After you have arrived at the hearing venue, the secretary will take you to a private meeting room. The room will be available to you throughout the duration of the hearing. If the hearing is scheduled to last into the afternoon, lunch will be provided for you and your representative(s).

The start of the hearing

When the DTP is ready to start, the secretary will direct you to the hearing room and advise you where to sit. All parties remain seated throughout the proceedings.

The Chairman of the DTP will introduce the DTP members and briefly explain the process to be followed.

Order of the DTP hearing

Once the Chairman has completed the introductions, the Charge will be read out by the Chairman and you will be asked whether you accept or deny the Charge laid against you. The IFoA will then open the case against you. The IFoA will set out what the allegations are and take the DTP through the evidence which it considers supports the allegations. The IFoA may also call witnesses. If witnesses are called, the IFoA will first ask them questions, then you or your representative can ask questions (this is called cross-examination), then the IFoA have an opportunity to ask any further questions they may have. The DTP members then have the chance to ask any questions they may have of the witness.

Once the IFoA has presented their case, it is your chance to present your case and call witnesses, if you wish. If you do call any witnesses the IFoA have the right to cross-examine them. The DTP members can also ask questions of any witnesses you call.

The IFoA will then make their closing submissions, which are a summing up of the IFoA's case. Then you or your representative can make your closing submissions. The DTP will then retire to determine the case.

Giving Evidence

The IFoA may call you as a witness or you may chose to give evidence. If you do give evidence, you will be asked to take a seat at the witness stand throughout the time you are giving evidence. Please ensure that you speak clearly and slowly into the microphone so that all the parties can hear you. You may find it helpful to refer to the note about appearing at a DTP as a witness, although this is primarily aimed at witnesses who are not the Respondent.

What can the DTP do?

It is open to the DTP to transfer the matter for consideration by a Capacity for Membership Panel under the capacity process if the DTP consider this is appropriate. Please see the information note “The Capacity for Membership Process” that helps explain this separate process. This can be found on our website at:

<https://www.actuaries.org.uk/documents/capacity-for-membership-process>

If the separate capacity process does not apply, the DTP will look at all the evidence and determine, by simple majority, whether the Charge of Misconduct has been established. The DTP will consider the following;

- Did you behave in the way alleged in the Charge? In other words, have the facts alleged against you been proved?
- If so, did that behaviour amount to Misconduct?

The DTP will retire and make a decision, in private, on the above matters. Once the DTP has made a decision on the above two points you will be advised as to whether the allegations have been proved and whether it amounted to Misconduct, before providing brief reasons for that decision.

The DTP may find the allegations in the Charge proven but may not think that they amount to Misconduct, in which case there will be no finding of Misconduct against you. The DTP may not find the allegations proven, in which case they will be dismissed and there will be no finding of Misconduct.

If the DTP find the Charge of Misconduct established, a decision will then be made on sanction. Both you and the IFoA will be given the opportunity to inform the DTP of any information that may be relevant to the sanction (e.g. financial position, previous findings of Misconduct)

The DTP will then retire again to make a decision on sanction. The Disciplinary Board have published [Sanctions Guidance](#); this can be found on the IFoA website. If the DTP decides to impose a sanction they can impose one or more of the sanctions detailed below. Alternatively, the DTP may decide that no sanction is appropriate. Once a decision has been made it will be announced, along with brief reasons. The sanctions available to the DTP are:

- A Reprimand.
- Payment of a fine.
- Suspend of any Certificate of the Respondent.
- Withdrawal of any Certificate of the Respondent.
- Exclusion from holding a Practising Certificate for a maximum of five years.
- Suspension from Membership of the IFoA for up to two years.
- Expulsion from Membership of the IFoA for up to five years.
- Exclusion from readmission to membership of the IFoA (if their Membership has lapsed for any reason) for up to five years.
- A period of education, retraining and/or supervised practice.

Costs

The DTP may also award costs against you, or award costs to you and against the IFoA. It does not automatically follow that you will be entitled to recover your costs if your defence of the Charge is successful or that you will be required to pay the costs of the IFoA if you are found guilty of Misconduct.

Applications for costs can be made by either party to the DTP after they have dealt with the issue of Misconduct and sanction, if appropriate.

If you wish to make an application to the DTP for costs, you should ensure you provide the DTP with a detailed breakdown of the costs incurred by you in relation to defending the allegation.

If the DTP do make a finding of Misconduct, the IFoA will usually make an application to the DTP for an award of costs against you. The IFoA will prepare a schedule setting out the costs incurred in relation to the hearing and this will be served on you in advance of the hearing. It would be helpful if you would bring a statement of your financial means to the DTP or provide them in advance if you are not attending.

When will the DTP make a decision?

The time taken to make a decision will vary from case to case, but the DTP usually make their decision on the day of the hearing and announce it orally. If you are not present at the hearing the secretary will contact you shortly after the hearing to notify you of the outcome. The DTP's detailed reasons for the decision will follow when the precise wording has been agreed. The written decision of the DTP is called a "determination" and will typically be provided to you within 2-3 weeks of the DTP meeting.

Is the determination of the DTP made public?

Where the DTP makes a finding in relation to Misconduct the determination will usually be published on the IFoA website and in The Actuary magazine. Further information about publication is available on the IFoA's website.

Can I appeal the determination of the DTP?

You do have a right of appeal if the DTP make a finding of Misconduct. A separate note is available about the Appeals process.

Can the IFoA or the person who made the allegation appeal the determination of the DTP?

No, they have no right of appeal.

Key relevant parts of the Scheme

Sections 8 and 9.

Where can I get advice or support?

You are entitled to obtain the support or advice of colleagues in the workplace or profession at any time, as well as having a general right to obtain independent legal advice about your rights in relation to any case brought under the Scheme. The Case Manager and secretary to the DTP are happy to provide factual information about each stage of the disciplinary case, but cannot advise you in relation to your legal rights or position.

Further information

If you have any further questions, please contact the secretary to the DTP, whose contact details are;

Secretary to the Disciplinary Tribunal Panel
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Level 2
Exchange Crescent
7 Conference Square
Edinburgh
EH3 8RA

Telephone: +44 (0)20 7632 2189

Email: clerk@actuaries.org.uk

For general enquiries please email disciplinary.enquiries@actuaries.org.uk or call +44 (0)131 240 1326.

Please note that this document is not legal advice. It is not intended to be a substitute for the Scheme.

Disciplinary Tribunal – Sample Room Layout

